

BILL NO. G-89-04-16 (as amended)

GENERAL ORDINANCE NO. G-89-12-89

AN ORDINANCE AMENDING CHAPTER 33 OF THE
MUNICIPAL CODE OF THE CITY OF FORT WAYNE, INDIANA.

WHEREAS, the City of Fort Wayne has adopted Chapter 33
of the Municipal Code regarding the use of buildings,
structures and land within the City, and,

WHEREAS, a proposed amendment as herein set out has
been made.

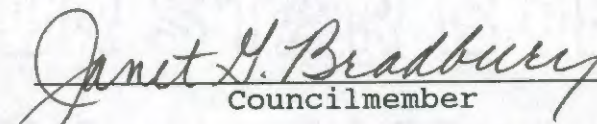
NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF
THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. Section 33-13 Special Uses shall be amended
to add a subsection which shall read:

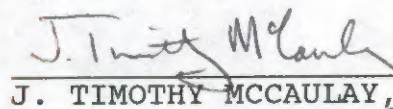
j. In M-1, M-2, and M-3 Districts, the Board of Zoning
Appeals may permit a railroad switching yard for truck
trailers.

SECTION 2. All other items and provisions of Chapter
33 of the Municipal Code are hereby ratified and affirmed.

SECTION 3. This Ordinance shall be in full force and
effect from and after its passage and signing by the Mayor.


Councilmember

APPROVED AS TO FORM AND LEGALITY:


J. TIMOTHY MCCAULAY, ATTORNEY

Read the first time in full and on motion by Bradbury, seconded by Stier, and duly adopted, read the second time by title and referred to the Committee on Regulations (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on _____, 19____, at _____ o'clock _____ M., E.S.T.

DATE: 4-25-89

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Stier, seconded by Long, and duly adopted, placed on its passage. ~~PASSED~~ lost by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT
TOTAL VOTES	<u>8</u>	_____	_____	<u>1</u>	_____
BRADBURY	<u>✓</u>	_____	_____	_____	_____
BURNS	<u>✓</u>	_____	_____	_____	_____
GIAQUINTA	_____	_____	_____	<u>✓</u>	_____
HENRY	<u>✓</u>	_____	_____	_____	_____
LONG	<u>✓</u>	_____	_____	_____	_____
REDD	<u>✓</u>	_____	_____	_____	_____
SCHMIDT	<u>✓</u>	_____	_____	_____	_____
STIER	<u>✓</u>	_____	_____	_____	_____
TALARICO	<u>✓</u>	_____	_____	_____	_____

DATE: 5-25-89

Nadyla Escherff
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL) (SPECIAL) (ZONING MAP) ORDINANCE RESOLUTION NO. A-12-89 on the 25th day of May, 1989,

ATTEST:

SEAL

Nadyla Escherff
SANDRA E. KENNEDY, CITY CLERK

Charles S. Reed
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 26th day of May, 1989, at the hour of 8:20 o'clock A.M., E.S.T.

Nadyla Escherff
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 26th day of May, 1989, at the hour of 9:40 o'clock A.M., E.S.T.

Paul Helmke
PAUL HELMKE, MAYOR

a. Bill No. Z-89-04-16 - Petition #392
Section 33-13 - Special Uses

Greg Purcell, Executive Director of Community & Economic Development appeared before the Commission. Mr. Purcell stated that this is amendment to the Zoning Ordinance text which would amend Section 33-13 and require a Special Use permit in certain districts, specifically M-1, M-2 & M-3 districts, for anyone wanting to have an inter-model freight facility, a railroad switching yard for truck trailers to come to the Board of Zoning Appeals. Mr. Purcell stated that this has been brought about as a result, of what we consider a new technology, a change in the technology for transportation use. He stated that both truck facilities and rail facilities are presently allowed in these zoning districts, but we now have a situation where rail cars are being substituted now for truck trailers which actually have rail wheels on them and are being transported. He stated that there is a current facility operating on the southwest side of town and that facility is proposing to expand. He stated that they had an opportunity to meet with the developers of that facility and the expansion area would be bounded by Ardmore, Nuttman and Engle Road. He stated that the current zoning ordinance would allow the use they are proposing to go in if they can meet the technical requirements, water, sewer, right-of-way, etc. He stated that if they brought in a proper plan the city would be in a position of having to issue them an Improvement Location Permit and allow the development to occur. He stated that because of the concern of the area residents, they have taken a look at this use which is rather intense and making an amendment to the zoning ordinance that would require this kind of use to be brought to the Board of Zoning Appeals, and that would require a public hearing. It would give the surrounding property owners a chance to voice their concerns and give the city a chance to take a look at special conditions which may be necessary in order to mitigate a detrimental impact to the surrounding properties. He stated if the impact would be too detrimental the use could be denied. He stated that they have met with Norfolk and Southern Railroad and they do have preliminary plans and they have looked at the plans and the city departments have made comments in terms of the existing laws. He stated that they have informed Norfolk and Southern that they are proposing this change in the Zoning Ordinance.

John Shoaff stated that he wanted to be sure he was clear on what the ordinance does. He stated where it states "may permit" it also means that it may forbid, and it would basically give the Board of Zoning Appeals the power to turn down this particular special use.

Mr. Purcell stated that was correct. Mr. Purcell stated that without this amendment to the Zoning Ordinance there will be no requirement for a public hearing.

Janet Bradbury questioned if the reason this was coming to their

attention now was because it is a new technology.

Mr. Purcell stated that it really is something new. He stated that historically there have been trucks on rail cars, but they were loaded on flatbed cars. He stated that the new technology you have the wheels that go on the railroad tracks and on the trailer rigs themselves. He stated that it makes it more efficient in order to be able to utilize rail and truck traffic and have that inter-model transfer point to go from one means of conveyance to another means of conveyance.

Steve Smith questioned that if the current operation of Norfolk and Southern is illegal and if they continue to operate there we would be proceeding to enforce discontinuance of that. He questioned then if the zoning amendment that was being proposed would give the city the right if they relocate it to an M-1, M-2 or M-3 site to still have control over it, where we would not otherwise.

Mr. Purcell stated that was correct.

The following people spoke in favor of the amendment stating the fact that they live by the existing inter-model switching yard and gave a list of hazards and problems that have risen due to the operation.

David Long, 4th District Councilman appeared before the Commission to speak in favor of the amendment. He stated that this amendment would give the city a means of controlling this type of use in the city limits. He stated this amendment would give the city the flexibility to deny a permit of this type if it finds that the use would be unduly detrimental to the surrounding area. He stated that the use presently at Nuttman and Brooklyn has created absolute chaos for the area residents.

- blocking traffic for extensive periods of time
- noise pollution - which can continue up to 24 hours a day
- devalues the residential properties in area
- dust & fumes
- safety factors in blocking the tracks prohibiting ambulances fire vehicles and police to pass
- blocking school bus traffic

David Fuelleman, President, Indian Village Assn
Burt Seitz, 3423 Laredo Av
Jenny Houth, President, Westfield Neighborhood Assn
Mark Kiley, 2119 Wawonaissa
Forest Butts, 4010 Nokomis Road
Jim Conner, 3926 Mound Pass
Loretta Serovey, 2311 Ontario
Dave Brock, 3916 Enola Ct
Cynthia Bryant, 2535 Brooklyn Av
John Hamrick, 3608 Algonquin Pass
Gary Collins, 4001 Indian Hills Dr

Kevin Salge

Thomas W. Yoder, Attorney for Norfolk & Southern Railroad appeared before the Commission in opposition to the amendment. Mr. Yoder stated that N&W has been acquiring options and is proposing to install the improvements which constitutes the subject matter of this proceeding. Mr. Yoder stated that the major concern of N&W about the proposed amendment and the statements made that evening was, he believed, the intention to cause this proposed amendment, if it passes to operate retroactively on a project that is already in the process of execution. Mr. Yoder stated he did not have a complete grasp of the details of the project, but he felt he does know a good deal about it. He stated that he could represent it to the Commission in good faith. He stated that a good many acres of land have already been optioned on the north side of the tracks on Nuttman Avenue, with the idea of implementing this project. He stated that at least 4 sizeable parcels have been optioned and 1 or 2 that are relatively small. He stated that at least one of the options as of now has been exercised constituting a binding contract between Norfolk & Western and the sellers of the property. He stated that obviously N&W cannot now default on the contract, without incurring the risk of legal liability. He stated also this project has been moving along now for some weeks. He stated he was not aware that a formal application had been made for permits, but initially there have been contacts between Norfolk Southern and N&W people with the appropriate departments of the City of Fort Wayne. He stated that preliminary plans have been submitted and based now attempts are being made to tailor those specifications to meet existing city requirements. He stated that what they have is a project that is not just a figment of someone imagination, it is a project that is in the process of being carried forward. He stated that as a lawyer he wanted to state that if he grasped the flavor of most of what was said that evening, he thought that the primary motivation behind the proposed amendment is to try to stop this project. He stated that he did not think that any of the lawyers that were present that evening are going to have to exercise their imagination too much to realize straight off that you may have a serious problem here not only of retroactivity but also of special legislation. He stated that this area has been in use as commercial establishments or industrial establishments for many years. He stated that the area that N&W is now acquiring is presently zoned to accommodate this use.

Janet Bradbury stated that Mr. Yoder indicated that this was not a new technology being implemented by the railroad.

Mr. Yoder stated that it is relatively new technology but there is nothing new about this particular type of facility. He stated that the existing facility has been in place for the last 2 years and was questioning the concern now just being voiced.

Janet Bradbury stated that the people seem to be relating that

this facility has increased in volume and in doing so the noise and pollution have increased over the last two years. Ms. Bradbury stated that the amendment does not deal with the existing facility but deals with switching yards in general and all M-1, M-2 & M-3 districts.

Steve Smith stated that the staff comments state that the current use that they are operating is illegal since it is located on land that are zoned R-1 & M-2.

Mr. Yoder stated he was unaware of that. He stated that he questioned Mr. Donahue, the manager of the present operation, if in his experience if it has been suggested to him that he has been operating illegally. He stated that Mr. Donahue said no, and that it was the first that he (Mr. Yoder) had heard of it.

Steve Smith stated that he would suggest that if they were waving the issue of special legislation at the Commission as a red flag to be concerned about a law suit, he would suggest that special legislation is in order when we find companies operating defying the existing laws of the municipality.

There was no one else present who wished to speak in favor of or in opposition to the proposed amendment.



THE CITY OF FORT WAYNE

CITY-COUNTY BUILDING • ONE MAIN STREET • FORT WAYNE, INDIANA 46802

23 May 1989

COMMUNICATIONS FROM THE CITY PLAN COMMISSION

The Common Council of the
City of Fort Wayne
CityCounty Building
One Main Street
Fort Wayne, IN 46802

Gentlemen and Mrs. Bradbury:

Attached hereto is the recommendation of the City Plan Commission on one (1) ordinance concerning the amendment of the Zoning Ordinance (General Ordinance No. G-06-80, amending Chapter 33 of the Municipal Code of the City of Fort Wayne, Indiana, 1946.) The proposed ordinance is designated as:

Bill No. G-89-04-16

Respectfully submitted,

CITY PLAN COMMISSION

Certified and signed this
23rd day of May 1989.

Robert Hutner
Secretary

April 24, 1989

Amend the Zoning Ordinance

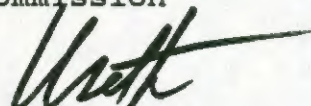
Section 33-13 Special Uses in Specified Districts

- (J) In M-1, M-2, and M-3 Districts, the Board may permit a railroad switching yard for truck trailers.

C&
ED

COMMUNITY & ECONOMIC DEVELOPMENT

MEMORANDUM

TO: City Plan Commission
FROM: V. C. Seth 
SUBJECT: Zoning Text Amendment
DATE: May 11, 1989

It will be appropriate to give you a brief background on the proposed zoning text amendment.

Recently Norfolk and Southern Railroads in connection with Triple Crown Trucking Company started an operation on the south side of the railroad tracks between Brooklyn Avenue and Nuttman Avenue. The use is primarily transportation of semi-trailers to and from that location and switching of semi-trailers between trains for various destinations. The current use is illegal since it is located on lands that are zoned R-1 and R-2 residential districts.

It is our opinion that such inter-model freight transfer facilities are a very intensive uses and should require public review so that appropriate conditions can be placed to ameliorate its adverse impacts on the surrounding areas. The proposed amendment to require Special Use approval through the Board of Zoning Appeals accomplishes that purpose.

I would also like to point out that after Councilman Long introduced this amendment, representatives from Norfolk and Southern visited with city staff for an informal review of a proposed location to relocate their current use between Brooklyn Avenue and Nuttman Avenue to a site zoned M-2 and bounded by Nuttman, Ardmore, Engle and the railroad tracks. We have transmitted comments of all city departments to Norfolk and Southern. We have also informed them of the proposed zoning text change and of the Plan Commission Public Hearing on this matter.

VCS/de

Attachment

**C&
ED**

COMMUNITY & ECONOMIC DEVELOPMENT

MEMORANDUM

TO: Plan Commission

FROM: V. C. Seth *VCS*

SUBJECT: Norfolk Southern/Triple Crown

DATE: May 22, 1989

Following my memorandum of May 11, 1989 on the zoning text amendment, the city staff has conducted a survey of the area used by Triple Crown between Brooklyn and Nuttman. It appears that Norfolk Southern has acquired additional land south of the railroad right-of-way. While the railroad right-of-way is zoned R-2 from Nuttman to McKinley and R-1 from McKinley to Brooklyn, the land south of the railroad right-of-way is zoned R-2 between Nuttman and McKinley and M-3 between McKinley and Brooklyn.

It is my understanding from talking with David Wright that while the city may not be able to control the railroad's use of land within its right-of-way, the railroad must comply with the zoning regulations beyond its right-of-way limits.

It appears from the survey that the mobile office is located in the R-2 residential zoned land. We have no record of any building permit being issued for this or for parking semi-trailers in the R-2 zoned area. For this use to be legal, it must receive a use variance approval from the Board of Zoning Appeals.

VCS/de

FACT SHEET

G-89-04-16

BILL NUMBER

**Division of Community
Development & Planning****BRIEF TITLE****APPROVAL DEADLINE****REASON**

Zoning Ordinance Amendment

DETAILS**Specific Location and/or Address**

N/A

Reason for Project

This amendment would allow the Board of Zoning Appeals to approve railroad switching yards for trucking purposes as a Special Use.

Discussion (Including relationship to other Council actions)15 May 1989 - Public Hearing

See Attached Minutes of Meeting

22 May 1989 - Business Meeting

Yvonne Stam declared a conflict of interest and abstained from participating in any discussion or voting on this matter.

Motion was made and seconded to return the ordinance to the Common Council with a DO PASS recommendation.

Of the eight (8) members present, six (6) voted in favor of the motion, one (1) abstained, and one (1) did not vote.

Motion carried.

POSITIONS**RECOMMENDATIONS****Sponsor**

City Plan Commission

Area Affected

City Wide

Other Areas

**Applicants/
Proponents**

Applicant(s)
Community & Economic
Development
City Department

Other

Opponents**Groups or Individuals**

Tom Yoder, attorney for
Norfolk & Southern Railroad
Basis of Opposition

-it would retroactively affect
a project already proposed
- felt this amendment was
special legislation

**Staff
Recommendation**☒ For ☐ Against

Reason Against

**Board or
Commission
Recommendation**

By

☒ For ☐ Against
☐ No Action Taken

☐ For with revisions to conditions
(See Details column for conditions)

**CITY COUNCIL
ACTIONS
(For Council
use only)**

☐ Pass ☐ Other
☐ Pass (as
amended) ☐ Hold
☐ Council Sub. ☐ Do not pass

DETAILS

POLICY/ PROGRAM IMPACT

Policy or
Program
Change

☐ No

☐ Yes

Operational
Impact
Assessment

Such uses would require Board of
Zoning Appeals Public Hearing.

(This space for further discussion)

Project Start

Date 25 April 1989

Projected Completion or Occupancy

Date

Fact Sheet Prepared by

Date 23 May 1989

Pat Biancaniello

Dolores Espinosa

Reviewed by

Date 5-23-89

Larry Maglio 38

Reference or Case Number

ORIGINAL

ORIGINAL

DIGEST SHEET

TITLE OF ORDINANCE Zoning Ordinance Amendment

DEPARTMENT REQUESTING ORDINANCE Land Use Management - C&ED

SYNOPSIS OF ORDINANCE This amendment would allow the Board of Zoning Appeals to approve railroad switching yards for trucking purposes as a Special Use.

11-89-04-16

EFFECT OF PASSAGE Permit the use and protect surrounding residential areas.

EFFECT OF NON-PASSAGE These uses could adversely impact residential areas.

MONEY INVOLVED (Direct Costs, Expenditures, Savings) None

(ASSIGN TO COMMITTEE (J.N.)) _____

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SECTION 2. All other items and provisions of Chapter
33 of the Municipal Code are hereby ratified and affirmed.

SECTION 3. This Ordinance shall be in full force and
effect from and after its passage and signing by the Mayor.

Janet H. Bradbury
Councilmember

APPROVED AS TO FORM AND LEGALITY:

J. Timothy McCauley
J. TIMOTHY MCCAULAY, ATTORNEY

BILL NO. G-89-04-16 (AS AMENDED)

REPORT OF THE COMMITTEE ON REGULATIONS

JANET G. BRADBURY, CHAIRPERSON
DAVID C. LONG, VICE CHAIRMAN
STIER, SCHMIDT, TALARICO

WE, YOUR COMMITTEE ON REGULATIONS TO WHOM WAS

REFERRED AN (ORDINANCE) (~~RESOLUTION~~) AMENDING CHAPTER
33 OF THE MUNICIPAL CODE OF THE CITY OF FORT WAYNE, INDIANA

HAVE HAD SAID (ORDINANCE) (RESOLUTION) UNDER CONSIDERATION AND
BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID

(ORDINANCE)

(RESOLUTION)

DO PASS

DO NOT PASS

ABSTAIN

NO REC

8 ayes
Unanimous

DATED: *5-25-89*

Sandra E. Kennedy
City Clerk